

SENATE BILL REPORT

ESB 5510

As Amended by House, April 13, 2015

Title: An act relating to simplifying and adding certainty to the calculation of workers' compensation benefits.

Brief Description: Simplifying and adding certainty to the calculation of workers' compensation benefits by creating a working group to develop recommendations.

Sponsors: Senators Braun, Baumgartner, Rivers and Angel.

Brief History:

Committee Activity: Commerce & Labor: 2/04/15, 2/11/15 [DP, DNP].

Passed Senate: 3/10/15, 41-8.

Passed House: 4/13/15, 97-0.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

Minority Report: Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

Staff: Mac Nicholson (786-7445)

Background: Under the state's industrial insurance laws, workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

Time-loss benefits are wage replacement benefits for workers who cannot work because of their injury. The amount of time-loss benefits is a percentage of the worker's pre-injury wages, and adjusts depending on the marital status of the worker and the number of the worker's children. An unmarried worker with no children receives 60 percent of their wages, while a married worker with no children receives 65 percent. The percentage is increased by 2 percent for each child of the injured worker, up to a maximum of 10 percent. The monthly time-loss benefit is capped at 120 percent of the state's average monthly wage, as determined by the Employment Security Department. Time-loss benefits cease as soon as the worker's

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recovery is complete and their earning power is restored to that existing at the time of the injury.

Workers who suffer certain types of injuries and workers whose injuries preclude any further gainful employment are entitled to permanent total disability pensions. Pension benefits are paid monthly, and are based on the amount of time-loss compensation to which the worker is entitled. Pension benefits are paid for the life of the injured worker. If a worker receiving a pension returns to gainful employment for wages, the Department of Labor and Industries (L&I) may suspend or terminate the pension.

When death results from the work-related injury, the surviving spouse receives a pension, calculated in the same manner as time-loss benefits, until the spouse remarries. Dependent children of a worker who dies from a work-related injury are also entitled to benefits, as are other dependents.

The monthly wages the worker received from all employment at the time of injury are used to calculate time-loss benefits. The statutory definition of wages includes medical, dental, and vision benefits; the reasonable value of room and board, housing, heating fuel, or similar considerations received from the employer as part of the worker's income; bonuses received in the last 12 months from the employer of injury; and tips reported to the employer for federal income tax purposes. The monthly wage calculation for seasonal and part-time workers is determined using the total wages earned, including overtime, from all employment in a consecutive 12-month period preceding the injury, which fairly represents the employment pattern.

Summary of Engrossed Bill: L&I must convene a benefit accuracy working group, by August 1, 2015, to develop recommendations to improve the calculation of wages under the industrial insurance program. Workgroup members are appointed by the director of L&I, and are composed of two members representing labor, two members representing employers, and at least two members representing L&I. The working group must focus on improving the accuracy, simplicity, fairness, and consistency of calculating and providing wage replacement benefits and must not consider overall reductions in existing worker benefit levels. The working group must report to the relevant committees of the Legislature by February 1, 2016, and issue a final report that includes any legislative proposals arising from its work no later than September 1, 2016.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.

Staff Summary of Public Testimony: PRO: Needless time is spent on calculating wages for compensation. Some people earn more on time loss than they earned when working. The current time-loss calculation is very complex, and can be calculated differently by different claims managers. This will bring simplicity and transparency to the calculation. This bill

will bring consistency and fairness to the claims system. This bill is important to employer and business groups.

CON: This bill would simplify wage calculation, but it would trade away accuracy and fairness. It removes consideration of the value of health care benefits, and could leave families without health care. The value of health care benefits is a major piece of overall compensation and should be included in wage calculation. This bill is particularly problematic for the construction industry, where workers work an erratic schedule due to construction activity and will hurt the calculation because of the 12-month averaging. There is unclear and ambiguous language in the legislation. This bill will reduce benefits for widows and children.

OTHER: The wage calculation does drive benefit levels. There will be different impacts to different industries under the proposal, including retail temporary help and the construction industry. There are no provisions in the legislation to address unusual work patterns.

Persons Testifying: PRO: Carolyn Logue, WA Food Industry Assn.; Bob Battles, Assn of WA Business; Kris Tefft, WA Self-Insurers Assn.; Paul Chasco, Educational Service District 113; Tammie Hetrick, WA Retail Assn.; Lauren Gubbe, Associated General Contractors.

CON: Elizabeth LePley, WA State Assn. for Justice; Joe Mizrahi, United Food and Commercial Workers Local 21; Neil Hartman, WA Building and Construction Trades Council; Renee Maher, Council of Metropolitan Police and Sheriffs.

OTHER: Vickie Kennedy, Labor and Industries.

House Amendment(s): The House amendment removes language directing the working group to develop recommendations to improve the calculation of wages. The House amendment also removes the requirement that the working group issue a final report containing legislative proposals, instead the working group need only report back to the Legislature.